

MINUTES OF THE ZONING BOARD OF APPEALS
TOWN OF ANDOVER, MASSACHUSETTS

Memorial Hall Library, Elm Sq., Andover

September 6, 2007

APPROVED 12-6-07

There were present: Anderson, McDonough, Jeton, Batchelder, Brown, and Ranalli. Meeting opened at 7:08 p.m. Reilly arrived at 7:28 p.m.

PETITION NO. 3721

PETITIONER: Edward Julian Realty

PREMISES AFFECTED: 321, 323, 325 Lowell Street

MEMBERS: Anderson, McDonough, Jeton, Batchelder, Brown & Ranalli

There was a request to continue to October. Batchelder made a motion to continue the hearing to S. Batchelder seconded the motion & the Board voted unanimously to continue to September.

PETITION NO. 3723

PETITIONER: Letourneau's

PREMISES AFFECTED: 349 N. Main St.

MEMBERS: Anderson (chair), McDonough (clerk), Brown, Batchelder, Ranalli

Shawn McKallagat, of Letourneau's Pharmacy, represented the petition to replace a pre-existing, non-conforming sign that exceeds the maximum area. He wishes to replace only the face of the sign with a different configuration and more historic style. There will be gooseneck lighting. The reason for the change is to increase visibility. There will be no change in the sign structure itself. Kaija Gilmore, Inspector of Buildings, stated that the current sign was issued a permit in error because there is no prior ZBA decision. She supports the current petition in order to legalize it and increase visibility. Anderson asked how long the existing sign has been standing. Mr. McKallagat stated that it has been there for 10 years. McDonough inquired if the height will change. It will not. Brown asked if the area is 37.5 sq. ft. McKallagat stated that is correct. A motion was made & seconded to close the public hearing. The Board voted (5-0) to close the hearing. Brown noted that the limit for area is 25 sq. ft. and for height is 8 ft., both of which this sign exceeds. Brown made a motion to approve the requested variance under section 5.2.10.3. Batchelder seconded the motion & the Board voted (5-0) to grant the variance. Ranalli will write the decision.

PETITION NO. 3725

PETITIONER: Pasquale

PREMISES AFFECTED: 41 Bancroft Rd.

MEMBERS: Anderson (chair), McDonough (clerk), Jeton, Brown, Batchelder

David Pasquale represented himself in his request to construct a 2-car garage addition that will not meet setbacks. The lot is on the corner of Holt & Bancroft Roads in the SRB District. Mr. Pasquale stated that the front yard slopes causing dangerous conditions in the wintertime on his driveway and car doors to close by themselves. Mr. Pasquale explained the recent land swap that he completed with his neighbor. Anderson asked why the addition would be closer to the front lot line. Pasquale stated that otherwise he would have to reconfigure a bulkhead in the back of the house. The Board waived a site view. Jeton voiced concern with site lines coming down Bancroft Road looking right. Anderson felt that turning left and right wouldn't be a problem because of the angle of the intersection. Brown agreed. Batchelder made a motion to close the public hearing. Brown seconded the motion & the Board voted (5-0) to close the hearing. Brown noted that the Board has granted this property variances in the past & that this proposal wasn't more detrimental, adding that the shape of the lot presents a hardship. Brown made a

motion to grant a variance (4.1.2) & deny the special permit as moot. McDonough seconded the motion & the Board voted (5-0) to grant the variance. Brown will write the decision.

PETITION NO. 3727**PETITIONER:** Westaway**PREMISES AFFECTED:** 326 River Road**MEMBERS:** Anderson (chair), McDonough (clerk), Jeton, Reilly, Batchelder, Brown, Ranalli

R. Bruce Westaway represented himself & his wife in their request to demolish an existing detached garage & rebuild a slightly larger detached garage in the same location. Neither the existing nor the proposed meet the side setback. The lot is 150' wide by 600' +/- deep. Mr. Westaway pointed out that the lot slopes away from the street and that there are wetlands in the vicinity. He also stated that the septic system is between the house and the driveway. The existing garage, in poor condition, is 20'x22', while the proposed would be 24'x28' expanding towards the house. The existing side setback is 14', while the proposed side setback would be 18'. McDonough asked if it were possible to construct a conforming garage in the rear yard. Petitioner explained that there are drainage issues in the rear yard. The Board waived the site view. Brown asked where the slope begins. Westaway said that it begins immediately behind the garage. He showed the Board some pictures. Batchelder asked if the pool is above ground. It is not. Anderson informed the Petitioner that a revised plot plan depicting the actual proposed side setback would have to be submitted to the Board. Batchelder made a motion to close the hearing. Jeton seconded the motion & the Board voted (7-0) to close the hearing. Anderson asked Jeton & Batchelder to sit off the case. Reilly stated that the proposed is less non-conforming. Ranalli agreed adding that reasonable hardship exists. Brown concurred noting that section 3.3.7 regarding reconstruction after demolition of a non-conforming structure may apply in this case. Anderson suggested that the Board could act on the application as filed with the condition that a revised plot plan be submitted, or Petitioner can file a supplemental application with section 3.3.7 and a new notice be sent to abutters. Anderson asked why it wasn't advertised for a special permit under section 3.3.5. McDonough stated that if there weren't an existing garage, she wouldn't be inclined to grant it, but that she's in favor of it because it is pre-existing. Anderson noted that it was built in 1949. Brown reminded that Board that at that time only 75' of frontage was required, with 30' front & 15' side setbacks. Brown stated that section 3.3.5 allows reconstruction. Anderson emphasized the need for a revised plot plan and that it would be better to act under an unambiguous section 3.3.7. Westaway commented on the project being put off until spring due to the mistaken section. Brown suggested that he could draft a decision for the next meeting. McDonough made a motion to re-open the public hearing and to continue to the October meeting. Brown seconded the motion adding that the corrected plot plan & amended application be submitted. The Board voted (5-0) to re-open & continue to October. Brown will draft the decision.

PETITION NO. 3718**PETITIONER:** Stafford**PREMISES AFFECTED:** 37-41 Lowell Street**MEMBERS:** Anderson (chair), McDonough (clerk), Jeton, Reilly, Batchelder, Brown

This is a continued public hearing. Attorney Daniel Hayes, Jr. represented the petitioner's request to subdivide a lot into two. Hayes waived the reading of the notice. No one objected. Hayes explained the changes to the proposed two-lot subdivision since the August meeting: Lot 80A conforms, Lot 80B would have non-conforming frontage (33.86'). Jeton made a motion to close the public hearing. Batchelder seconded the motion & the Board voted unanimously to close the hearing. Jeton stated that she had no problem with the current proposal. Batchelder made a motion to approve the subdivision with the revised plan. Jeton seconded the motion & the Board voted unanimously to approve it. Jeton will write the decision. Reilly will be off the case.

PETITION NO. 3722

PETITIONER: Condylne LLC

PREMISES AFFECTED: 160 Dascomb Rd.

MEMBERS: Anderson (chair), McDonough (clerk), Reilly, Brown, Batchelder

This is a continued public hearing. Attorney Mark Johnson represented the Petitioner and agreed to waive the reading of the notice. No one objected. Johnson submitted a revised plan & a letter addressing the relief requested. Of primary importance is whether Smith Dr. is on a subdivision plan. He stated that it was shown on an ANR plan at the Registry of Deeds, signed by the Andover & Tewksbury Planning Boards and therefore it constitutes frontage for this lot. Therefore, they require relief to expand the building, parking & landscaping. Anderson asked how many variance requests would be eliminated if Dascomb Road were the frontage. Johnson stated that only one would be eliminated, adding that Smith Drive is part of the lot. They have filed with the Planning Board in Andover & will file in Tewksbury & Conservation Commission. He also anticipates returning the ZBA, however he wants to go forward with the current application than keeping the hearing open. Brown asked what would change with Planning requiring them to return to the ZBA. Johnson explained that the percentage of coverage might be off by 1/2% +/- for the parking area location and the signage. The Board waived the site view. Brown made a motion to close the hearing. Reilly seconded the motion & the Board voted unanimously to close the hearing. McDonough will be off the case. Anderson commented that the number of requests is complicated asking for the Board's feelings. The Board stated that they were not troubled by it, especially with the color-coded plan depicting the requested relief. Reilly made a motion to approve with Dascomb Road as the frontage & the requested relief as depicted on the plan (1-14). Batchelder seconded the motion. Anderson stated that it is not detrimental & that there is sufficient hardship. The Board agreed. Brown added that the lot is locked in by wetlands. Anderson asked for a vote of those in favor of approving the requested relief. The Board approved (5-0) the special permits & variances pursuant to the notes (1-14) on the plan dated 7/16/07 rev. 6ZBA. Anderson asked Johnson to draft the decision. Brown emphasized that it would not be binding for the Board to use his draft. Johnson agreed. Batchelder will write the decision for the Board. Johnson noted that the revision date is 8/29/07. The Board agreed.

PETITION NO. 3714

PETITIONER: Ristuccia

PREMISES AFFECTED: 88 Central St.

MEMBERS: McDonough, Jeton, Reilly, Batchelder and Brown

Petitioner requested to withdraw without prejudice. McDonough made a motion to withdraw without prejudice. Reilly seconded the motion & the Board voted (5-0) to withdraw without prejudice.

PETITION NO. 3716

PETITIONER: Terravert LLC

PREMISES AFFECTED: 65 Cheever Circle

MEMBERS: Anderson (Chair), McDonough (Clerk), Jeton, Ranalli, Brown

Attorney Mark Johnson represented the Petitioner. Also present were Richard Kaminski, engineer, & Ralph Arabian, principal of Terravert LLC. Johnson explained to the Board that Mr. Arabian had been importing fill onto his lots (65 & 67 Cheever Circle) and regarding it, thus changing the slope. Arabian met with the Inspector of Buildings prior to the activity. Based on his meeting, he understood that he did not need a permit. The Inspector received a complaint regarding the importation/regarding relative to a drainage issue that is alleged to be caused by Arabian's site work. Johnson stated that the alleged drainage issues are due to a culvert & swale (a Town drain) on an abutting lot, not from Arabian's lot. Subsequent to the complaint, a stop work order was issued, thus preventing completion of the regarding. The Inspector of Buildings suggested they file with the Board. Arabian wishes to complete the work. Richard Kaminski, engineer, gave an overview of the lot & work completed to date: wooded lot with steep grades (17-20%). He noted that the by law allows up to 300 cubic yards (Arabian has imported

275) & the backside of the lot is steep. Kaminski pointed out that the by law (section 4.1.4.5) states that a natural lot with grade in excess of 35% has to be left alone, but that where the fill was brought in the slope exceeds 25%. The fill occupies 26% of the site at the street line & Arabian wants to level the fill to blend it in. The total area of grading will be 18% at completion. Anderson asked what the natural grade was before importation. Kaminski submitted a letter stating that he was hired after the fill was brought in. He used Town's topographical maps (1998), which show the natural grade as 17-20%. Anderson asked for the Petitioner's plans for the lot after the regarding is complete. Mr. Arabian told the Board that he intends to make it nice. Anderson asked if he plans to build. Arabian admitted that he wants to reserve the option to build. Batchelder asked if there were trees on site prior to filling. There were. Anderson asked if Arabian had any present intentions for the site or within 5 years. He does not now but may sell it. Fabio Piergentili, abutter across street, spoke in support, concurring that the drainage issues stem from a catch basin across the street from 65 Cheever Circle, adding that regrading would decrease drainage issues. John Doherty, 69 Carmel Rd., abutter to rear, spoke in opposition stating that water inundates the lot behind 65 Cheever causing damage to properties to the rear. He noted that he represented the view of himself, the Thibedeaus & Sturmhoeffels. McDonough asked for elaboration on water damage. Doherty explained that the drainage issues have increased over the years due to construction. Arabian clarified for the Board who are the rear abutters; the Barbieri's water problems are due to the aforementioned catch basin, drain pipe & natural swale, not his activities, although he has offered to fix it. Mr. Levenson, abutter to 65 Cheever, has agreed w/Arabian to fix the problem. Johnson emphasized that the water flow is designed to flow via the swale, offering to show a video of a rainstorm. Anderson asked Johnson to bring the video to the view. Johnson asked the Board to refocus discussion on fill & the stop work order, not drainage issues. Johnson argued that no violation exists or will exist upon completion, but that the stop work order prevented completion. But they have also applied for relief. Anderson asked for substantiation. It has been provided in the packet submitted to the Board. Anderson asked for verification from the truck driver, owner & engineer with his stamp that the quantities are as represented. Kaminski emphasized that he can only base his calculations on the Town topographical maps. Anderson asked him to outline the basis & scientific certainty in his letter. Kaminski will not be able to provide this information for the site view on Saturday, 9/8/07. Batchelder will be off the case. Anderson, Jeton, McDonough, Ranalli & Brown will be on it. The Board will view the premises on Saturday, 9/8/07 at 8 a.m. Brown inquired about a letter from Inspector of Buildings dated 9/20/06 regarding the stop work order, whether it was in effect & if there was another stop work order. Johnson confirmed that there was another one. Brown asked for the basis of the second stop work order, if it was related to slope disturbance. Johnson confirmed that it is. Brown also asked about the Party Aggrieved filing & stamped documents depicting what the original slopes were. Kaminski reminded him that he could only go by the Town topography maps. Arabian explained that the first stop work order was issued & lifted because the Inspector thought the limit was reached. He had informed her that it was a separate lot & she allowed him to continue the work. It was not for the regrading. Anderson asked Attorney Andrew Caffrey if he wished to comment on behalf of his clients. Caffrey declined. McDonough made a motion to continue the hearing to the October meeting. The motion was seconded & the Board voted (5-0) to continue the hearing to the October meeting. The Board will view the premises on Saturday, Sept. 8, 2007 at 8 a.m.

PETITION NO. 3724**PETITIONER:** Geneva H. Killorin 1992 Trust**PREMISES AFFECTED:** 36 Central Street**MEMBERS:** Anderson (Chair), McDonough (Clerk), Jeton, Reilly and Brown

Shelley Ranalli, Associate Member, is recused because she lives in the neighborhood. Attorney Thomas Caffrey represented the Petitioner in the request to modify Decision #55 that restricted subdivision of the lot. Also present were Bill McLeod, project engineer, & Eric Killorin, Petitioner. The lot is located at the corner of Central & School Streets. Caffrey gave an overview of the lot's history: 1 lot subdivided into 6 in 1940, condition of Decision #55 (no further subdivision of the 6 lots) except that if #36 Central is no longer an apt. building, it may be subdivided (valid until Jan. 1, 1980 – 40 yr. restriction), in 1959 a ANR plan was recorded at the Registry of Deeds to subdivide lots 3, 4.5 which released the restriction of Dec. #55. Petitioner wishes to create one new lot of approximately 19,000 sq. ft. Attorney Caffrey noted that

other lots in the area are smaller than the proposed lot. Anderson asked if the apartment building would remain as apartments. Caffrey stated that no decision has been made on that issue & that it depends on the Board's decision. Anderson further inquired that if the single-family dwelling is built on the proposed lot, would the apartments then remain. Caffrey stated that they would remain unchanged. William Ryan, 53 School St., summarized the history of the land, which was subdivided for reasons of financial hardship. He voiced concern with traffic problems & stated his opposition. James Lyman, 50 School St., commented that the current owner does not have a financial hardship. He asked for more time to review the file & to seek counsel. Karen Herman, 53 Sunset Rock Rd., Chair of the Preservation Commission, informed the Board that the property is located in the Central Street Historic District, which is on the National Register, and built in 1891 by the Beyer's family. She gave the history of the property & voiced interest in the proposed new house. The Board had several questions about the Preservation Commission's role with new construction. Ms. Herman was uncertain, except that there are federal guidelines & that she would file an impact statement with the State. Caffrey argued that the neighbors were notified and that there was no proof of the property being on the National Register, but that it's on the Andover Survey. Zoning Administrative Secretary Barbara Burke informed the Board that she gave Caffrey the application for Preservation Commission & put him in touch with Ms. Herman. Anderson asked Herman to address the registry status. Herman submitted a State document regarding the National Historic Register. McDonough read the document into the record. Anderson commented that the house itself is not registered, but the street is. Caffrey agreed. Herman argued that the street is equally important. There was further discussion over the significance of the structure versus the setting. Anderson asked for the applicant's basis for requesting a modification only. Caffrey cited Ch. 40A, section 14, which states the ZBA can change a decision & that if substantive, a filing is required. Anderson asked if section 7 of Decision #55 is what they seek to modify. They do. Anderson pointed out the condition that as long as the 8 apt. building remains, there shall be no subdivision. Caffrey argued that as long as it is maintained as apartments. Caffrey argued that they could have the apartment building as right under Decision 55. Anderson disagreed. The Board discussed the rights that Decision 55 allowed the other property owners and the current owner of #36 Central St. Caffrey explained that they seek to modify to have the new lot & the apartments and that it would almost be a taking if not allowed to exercise Decision 55. There was some discussion on access & traffic. Anderson asked if they would object to continue to October. Caffrey did not object to a continuance to October adding that he needs to speak with his client & engineer regarding traffic & access. There are no architectural plans for the new lot. Anderson asked that if the Board voted to modify Decision No. 55, would the Petitioner agree to a condition of no further subdivision. Caffrey stated that they would agree to two lots. Anderson asked about Condition 8 of Decision No. 55 regarding the 8 apts. – keeping the 8 units on one lot or a single-family dwelling and two lots. Caffrey didn't agree explaining that that would effectively take away the valuable property right that his client has. McDonough made a motion to continue the public hearing to 10/14/07. Brown seconded the motion & the Board voted 6-0 to continue to 10/14/07. Anderson suggested that the neighbors might want to retain counsel. Brown suggested the Board take a view. Anderson announced that the Board would view the site view on Saturday, 9/8/07 between 8-9 a.m.

PETITION NO. 3726

PETITIONER: Barenboim

PREMISES AFFECTED: 11 Bateson Dr.

MEMBERS: Anderson (Chair), McDonough (Clerk), Jeton, Reilly and Brown

Attorney Mark Johnson represented the Petitioner in their request for a variance to develop a vacant lot that lacks frontage (75-77'). Petitioners purchased the lot 23 years ago along with the lot on which their house is now located. They kept one vacant for investment purposes. It has been assessed as buildable & they have paid taxes on a buildable lot since they purchased it. The non-conformity exists now due to a change in the Zoning By Law. In the past, the Town has combined unbuildable with buildable lots. This is not the case for this vacant lot. Batchelder pointed out that the lot was created as part of a cluster subdivision. Johnson added that the minimum frontage for a cluster has increased to 100' since the subject lot was created. Anderson inquired as to whether the lot was approved as a cluster. Johnson stated that it seems so, although the decision is not definitive. Lynne Shay, 9 Bateson Dr., voiced concern

over the assessment suggested Petitioner be reimbursed John Shay, 9 Bateson Dr., voiced concern with the impact a new house would have their lot due to drainage, water & wetland issues. He noted an easement on the plan that would restrict construction on the lot. He urged the Board to view the site & asked for reasonable measures. Dan Tamasanis, 10 Bateson Dr., voiced similar concerns. Todd Bateson, 115 Argilla Rd & 111 Argilla Rd, rear abutter, stated that it should be a buildable lot. Fred Iannazzi, 45 Oriole Dr., rear abutter, spoke in favor. Thomas Barenboim, brother to Petitioner, spoke in favor, emphasized that his brother was never notified in the zoning change & has paid taxes for 23 years. He added that his brother would accommodate everyone within reason & that the water tables are not in their control. Mr. Bateson, developer of Bateson Dr., commented that the water issues are related to basements being too deep, not the water table. He noted that trees can be planted to mitigate water issues & that it is a buildable lot. Richard Aron, 7 Bateson Dr., spoke in favor, adding that he has not water problem on his lot. Kaija Gilmore, Inspector of Buildings, explained that she denied the building permit based on: 1. the lot was held in common ownership, 2. the cluster subdivision expired, 3. the Town does not notify each individual resident of zoning changes, they're printed in the paper, and 4. it's a non-conforming lot. She added that no actual application was submitted. Johnson argued that the lot is unique in that taxes have been paid as a buildable lot for 23 years & no reimbursement is possible. Anderson asked when the zoning change took effect. Johnson was uncertain, as was the Inspector of Buildings. Brown informed them that in 1980 there was an amendment to the by law. Mr. Shay noted that the last change was in 1987, warrant article #72. The Board will view the site on Saturday between 8-9 a.m.

Jeton read changes to the August 2007 minutes. McDonough made a motion to approve the August 2007 minutes with the changes submitted by Jeton. Brown seconded the motion & the Board unanimously approved them.

At 10:20 p.m. the Board had an informal discussion with representatives of Light Tower, Inc. (formerly National Grid). Anderson recused himself from the discussions and left the room. Discussion was related to whether or not Light Tower needed to file an application with the ZBA in order to seek approval to install additional equipment boxes on the utility poles that were previously approved by the Board to house antennas & equipment boxes for a Digital Antenna System (DAS). Brown clarified that the additional boxes are needed to increase the capacity of the carriers (telecommunications). Jeton confirmed this. Kaija Gilmore, Inspector of Buildings, stated that she isn't against it, but thought the original decision should be modified to allow a new client into the DAS. Jeton explained that the applicant would be the same company, but with a new name. Mike Cooper, of Light Tower, explained the changes within National Grid. Gilmore feels it is a request for collocation. Jeton pointed out that the prior decision deals with the pole locations. Brown noted that this is different than collocating more antennas, because it is the lease of bandwidth, not space on the pole. Cooper pointed out that section 6.1 defines wireless communication facility and does not include Digital Antenna System (antennas & supporting structures). They are only adding a box and connecting it to the first box with wire. He added that the original application refers to 'boxes'. Jeton added that it is only one additional box per pole. Batchelder, McDonough, Ranalli & Jeton wanted to see the application. Brown did not feel he needed to see an application. McDonough summarized that the Board is upholding the Inspector of Buildings.

The Board then postponed discussed of allowing temporary trailers in the absence of a catastrophe or demolition of an existing dwelling.